

REMARKS

Status of the Claims

Claims 39-45, 48, 49, 52, 55-58, 60-69, 81, 82, 84, 85 and 89-92 were pending. Claim 52 is canceled herein without prejudice or disclaimer. Claims 81, 82, 84, 85 and 89-92 are withdrawn as drawn to a non-elected invention. Claims 39-45, 48, 49, 55-58 and 60-69 are presently under consideration.

Claim Amendment

Claim 42 is amended to clarify that the second gas is also introduced into the dialysis fluid to allow the second gas to diffuse across the dialysis membrane to the culture fluid. The amendment is supported in the Specification at least at pg. 3, lines 34-38, pg. 4, lines 1-2 and pg. 10, lines 17-22.

Claims 55-57 are amended to replace “area/surface ratio” with “area/volume ratio. The amendment is supported in the Specification at least at pg. 4, line 32 to pg. 5, line 1.

Claim 60 is amended to replace “the space for culturing the cells,” which lacks antecedent basis support in claim 39, with “the culture vessel,” which is supported in claim 39.

Claim 69 is amended to replace “harvesting the cells” with “separating cells from the culture fluid after culturing the cells,” to clarify that the cells are harvested after culturing. The amendment is supported in the Specification at least at pg. 14, line 29 to pg. 15, line 7.

Applicant respectfully submits that no new matter is added by amendment.

Rejection of Claims Under 35 U.S.C. §112, 2nd Paragraph

Claims 42, 52, 55, 56, 60 and 69 were rejected under 35 U.S.C. §112, first paragraph as indefinite.

Claim 42 is amended to clarify that the second gas is introducing into the dialysis fluid to allow diffusion across the dialysis membrane to the culture fluid, in addition to being directly introduced into the culture fluid.

Cancellation of claim 52 moots the rejection. Applicant notes that "Cuprophane" is in fact a registered trademark, for which the generic term appears to be "regenerated cellulose" as recited in claim 49. There does not appear to be a more explicit generic term for "Cuprophane".

Claims 55-57 are amended to substitute the correct term "area/volume ratio" for "area/surface ratio."

Claim 60 is amended to replace "the space for culturing the cells," which lacks antecedent basis support in claim 39, with "the culture vessel," which is supported in claim 39.

Claim 69 is amended to clarify that the cells are harvested after being cultured using the steps of claim 39.

Rejection of Claims Under 35 USC 103

Claims 39-45, 48, 49, 52, 55-58 and 60-69 were rejected under 35 U.S.C. §103(a) as obvious over Portner et al. (1998, Appl. Microbiol. Biotechnol. 50:403-14, hereafter "Portner").

Submitted herewith is a Declaration under Rule 132 by Prof. Herbert Markl, a co-author of the Portner reference, attesting that the disclosure in the Portner publication was derived from the Applicant's own work. Also attached is a PubMed citation abstract, indicating that the publication date of Portner was October, 1998. Since the instant application has a priority date of September 21, 1999, the Portner reference is only 102(a) prior art to the instant application and is effectively removed as a prior art reference by Prof. Markl's Rule 132 Declaration. Therefore, Applicant submits that the rejection under 35 U.S.C. §103 is overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

Conclusion

For the reasons stated above, Applicants submit that the amended claims are in condition for allowance and requests an early decision to that effect.

Respectfully submitted,



Richard A. Nakashima
Reg. No. 42,023
Phone 303-447-7728

Dated: March 5, 2008